

ANTI-TERRORISM EXPLOSIVES ACT OF 2002

SEPTEMBER 17, 2002.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4864]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 4864) to combat terrorism and defend the Nation against ter-
rorist acts, and for other purposes, having considered the same, re-
ports favorably thereon with an amendment and recommends that
the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Anti-Terrorism Explosives Act of 2002”.

SEC. 2. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841(j) of title 18, United States Code, is amended to
read as follows:

“(j) ‘Permittee’ means any user of explosives for a lawful purpose, who has obtained a user permit or a limited permit under this chapter.”.

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of such title is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “and”; and

(B) by striking paragraph (3) and inserting the following:

“(3) other than a licensee or permittee, knowingly—

“(A) to transport, ship, cause to be transported, or receive any explosive materials; or

“(B) to distribute explosive materials to any person other than a licensee or permittee; or

“(4) who is a holder of a limited permit—

“(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

“(B) to receive explosive materials from a licensee or permittee whose premises are located in the State of residence of the holder, except that the holder of a limited permit may so receive explosive materials on 4 or fewer occasions pursuant to regulations prescribed by the Secretary.”; and

(2) by striking subsection (b) and inserting the following:

“(b) It shall be unlawful for any licensee or permittee knowingly to distribute any explosive materials to any person other than—

“(1) a licensee;

“(2) a holder of a user permit; or

“(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the transferor’s premises are located.”.

(c) LICENSES AND USER PERMITS.—Section 843(a) of such title is amended—

(1) in the 1st sentence—

(A) by inserting “or limited permit” after “user permit”; and

(B) by inserting “, including the names of and appropriate identifying information regarding all employees who will be authorized by the employer to possess explosive materials, as well as fingerprints and a photograph of each responsible person with respect to the applicant. In this section, the term ‘responsible person’ means, with respect to an applicant, an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials” before the period; and

(2) by striking the 3rd sentence and inserting “Each license or user permit shall be valid for no longer than 3 years from the date of issuance, and each limited permit shall be valid for no longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit (except that, in the case of the renewal of a limited permit, the verification requirement of subsection (b)(5) may be satisfied by inspection or such other means as the Secretary deems appropriate) and upon payment of a renewal fee not to exceed ½ of the original fee.”.

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of such title is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person who is prohibited from receiving, distributing, transporting, or possessing explosive materials under subsection (d) or (i) of section 842;”;

(2) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively, and inserting after paragraph (1) the following:

“(2) none of the employees who will be authorized by the applicant to possess explosive materials in the course of their employment with the applicant is a person whose possession of explosives would be unlawful under section 842(i);”;

(3) in paragraph (5) (as so redesignated)—

(A) by inserting “the Secretary has verified by inspection that” before “the applicant”; and

(B) by striking “and” at the end;

(4) by striking the period at the end of paragraph (6) (as so redesignated) and inserting “; and”; and

(5) by adding at the end the following:

“(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 4 different occasions during any 12-month period in which a limited permit issued to the applicant is in effect.”.

(e) DEADLINE FOR APPROVAL OR DENIAL OF APPLICATION.—Section 843(c) of such title is amended by striking “a period of forty-five days beginning on the date such” and inserting “90 days after the”.

(f) INSPECTION AUTHORITY.—Section 843(f) of such title is amended—

(1) in the 1st sentence—

(A) by striking “permittees” and inserting “holders of user permits”; and

(B) by inserting “licensees and permittees” before “shall submit”; and

(2) in the 2nd sentence, by striking “permittee” the first place it appears and inserting “holder of a user permit”.

(g) POSTING OF PERMITS.—Section 843(g) of such title is amended by inserting “user” before “permits”.

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of such title is amended by adding at the end the following:

“(h)(1) If the Secretary receives from an employer the name and other identifying information with respect to a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether possession of explosives by the responsible person or the employee, as the case may be, would be unlawful under section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2) of this subsection.

“(2)(A) If the Secretary determines that possession of explosives by the responsible person or the employee would not be unlawful under section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a letter of clearance which confirms the determination.

“(B) If the Secretary determines that possession of explosives by the responsible person or the employee would be unlawful under section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document which confirms the determination, explains the grounds for the determination, provides information on how the disability may be relieved, and explains how the determination may be appealed.”.

(i) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(j) ELECTRONIC RECORDS.—Not later than one year after the effective date of this Act, the Secretary of the Treasury shall maintain an electronic record of each license, user permit, or limit permit issued or renewed under section 843 of title 18, United States Code, on or after one year after the effective date of this Act.

SEC. 3. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVE MATERIALS.—Section 842(d) of title 18, United States Code, is amended—

(1) by striking “or” at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting “or has been committed to a mental institution;”; and

(3) by adding at the end the following:

“(7) is an alien, other than a lawful permanent resident alien (as defined in section 101(a)(20) of the Immigration and Nationality Act) or an alien described in subsection (q)(2) of this section;

“(8) has been discharged from the Armed Forces under dishonorable conditions; or

“(9) having been a citizen of the United States, has renounced his citizenship.”.

(b) POSSESSION OF EXPLOSIVES.—Section 842(i) of such title is amended—

(1) by striking “or” at the end of paragraph (3); and

(2) by inserting after paragraph (4) the following:

“(5) who, is an alien, other than a lawful permanent resident alien (as defined in section 101(a)(20) of the Immigration and Nationality Act) or an alien described in subsection (q)(2);

“(6) who has been discharged from the Armed Forces under dishonorable conditions; or

“(7) who, having been a citizen of the United States, has renounced his citizenship.”.

(c) PROVISIONS RELATING TO LEGAL ALIENS.—Section 842 of such title is amended by adding at the end the following:

“(q) PROVISIONS RELATING TO LEGAL ALIENS.—

“(1) DEFINITION.—In this subsection, the term ‘alien’ has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

“(2) EXCEPTIONS.—An alien is described in this paragraph if the alien—

“(A) is—

- “(i) in lawful nonimmigrant status;
- “(ii) a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); or
- “(iii) in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); and

“(B) is—

“(i) a law enforcement officer of a foreign country designated in writing by the Attorney General as a country covered by this subparagraph, and is entering the United States on official law enforcement business;

“(ii) a person having the authority to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed under section 843(a), and shipping, transporting, possessing or receiving explosive materials relates to the authority; or

“(iii) a member of the armed forces of a foreign country that is a member of the North Atlantic Treaty Organization, Australia, New Zealand, Japan, Republic of Korea, or other foreign country designated in writing by the Attorney General, after consultation with the Secretary of Defense, as a country covered by this subparagraph (whether or not admitted in a non-immigrant status), who is present in the United States under military orders for training or other authorized purpose, and the shipping, transporting, possessing, or receiving explosive materials is in furtherance of the military purpose;

“(iv) lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation.”

(d) EXPANSION OF AUTHORITY TO PROVIDE RELIEF FROM DISABILITIES.—Section 845(b) of such title is amended—

(1) by striking “had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year” and inserting “is prohibited from shipping, transporting, receiving, or possessing any explosive”;

(2) by striking “of such indictment or conviction” and inserting “of the applicable provision of section 842(i)”;

(3) by striking “the indictment or conviction” and inserting “the applicability of such provision”;

(4) by striking “of indictment or conviction” and inserting “of such applicability”; and

(5) by striking “by such indictment or conviction” and inserting “by such applicability”.

SEC. 4. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, is further amended by adding at the end the following:

“(i) A person who manufactures or imports explosive materials or ammonium nitrate shall, as required by letter issued by the Secretary, furnish samples of the explosive materials or ammonium nitrate, information on chemical composition of the explosive materials or ammonium nitrate, and any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate. The Secretary shall, by regulation, provide for the reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.”.

SEC. 5. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting “or any institution or organization receiving Federal financial assistance,” before “shall”.

PURPOSE AND SUMMARY

H.R. 4864, the “Anti-Terrorism Explosives Act of 2002,” provides tighter security for explosive materials and increased security measures for purchasers and possessors of explosives by requiring

all persons who wish to obtain explosives, even for limited use, to obtain a permit.

The legislation would expand the list of persons who are prohibited from receiving explosive materials to make these laws conform with the list of persons restricted from possessing firearms. Additionally, the bill requires companies that apply for a permit to possess, use or transfer explosives to submit a list to the Bureau of Alcohol, Tobacco and Firearms (ATF) of all employees who have responsibility for, or will have possession of, explosive materials to verify that these individuals are not on the list of persons who are prohibited from purchasing or possessing explosives. Explosive manufacturers will also be required, under this legislation, to provide a sample of their explosives to facilitate the tracking of these materials for ATF. Finally, the bill would expand Federal jurisdiction over intentional fires or explosions occurring on Federal property to include institutions or organizations receiving Federal financial assistance.

BACKGROUND AND NEED FOR THE LEGISLATION

Since September 11, 2001, our country has been on high alert. Americans have become accustomed to frequent notifications about possible terrorist threats and increased security throughout our society. Congress has passed legislation requiring background checks for airport workers, hazmat truck drivers, and researchers working with anthrax. These precautions are necessary to prevent certain types of terrorist attacks. However, there are additional precautions that have not been taken that would help to prevent threats from explosives. This legislation includes many of these precautions.

In recent years, our country has seen an increase in terrorist activities. In 1993, terrorists detonated explosives at the World Trade Center. Terrorists detonated explosives in the Murrah Federal Building in Oklahoma City in 1995. This year, Richard Reid was arrested after trying to detonate a bomb in his shoe on an aircraft. The Attorney General has stated that the suicide bombings and car bombings could be the next line of attack by terrorists in the United States. On June 10, 2002, the Attorney General announced that the FBI had uncovered a terrorist plot to detonate a "dirty bomb"—a mixture of common explosives and radioactive materials in an United States metropolitan area.

Currently, individuals seeking to purchase explosives in intrastate commerce are not required to obtain a permit. This legislation requires all persons purchasing explosives to obtain a permit from ATF. This will allow ATF to perform background checks on all applicants for permits and ensure proper handling and storage procedures will be used to prevent mishandling and misuse of explosives.

This bill would add categories of persons to the list of persons prohibited from receiving or possessing explosive materials. The purpose of this expansion would be to try to minimize the risk of explosives being mishandled or misused by persons who may pose a particular security threat. The categories of persons prohibited from purchasing explosives is updated under this legislation to more closely reflect the list of persons prohibited from purchasing

firearms. The bill includes expanded provisions for relief from disability to allow for appeal of all categories of prohibited persons.

The bill seeks to achieve a balance between security measures, which are necessary to prevent access to explosives by certain individuals, and protection of privacy interests. Although an applicant company would receive notice that an individual employed by the company may be prohibited from possessing explosives, notification of the reasons that an individual is prohibited from possessing explosives would only be provided to that individual in an effort to protect privacy. Notice of rights to appeal and information regarding those rights would also be provided directly to the individual.

This legislation also allows ATF to compile samples of explosive materials that are manufactured and imported by Federally licensed entities to give them the ability to quickly determine what explosive materials were used in an incident and track these materials.

Current law makes it a crime to damage any Federally owned or leased property by intentional use of fire or explosives.¹ Expanding the law to include institutions or organizations that receive Federal financial assistance would allow ATF to provide their expertise and provide the protection of Federal criminal laws to additional entities.

HEARINGS

The Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 4864, the “Anti-Terrorism Explosives Act of 2002” on June 11, 2002. Testimony was heard from three witnesses: The Honorable Kenneth Lawson, Assistant Secretary of Enforcement, U.S. Department of the Treasury; Bradley A. Buckles, Director, Bureau of Alcohol, Tobacco and Firearms; and J. Christopher Ronay, President, Institute of Makers of Explosives.

COMMITTEE CONSIDERATION

On June 13, 2002, the Subcommittee on Crime, Terrorism, and Homeland Security met in open session and ordered favorably reported the bill H.R. 4864, by voice vote, a quorum being present. On June 18, 2002, the Committee on the Judiciary met in open session and ordered favorably reported the bill, H.R. 4864, as amended, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on this legislation.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

¹ 18 U.S.C. § 844 (2002)

PERFORMANCE GOALS AND OBJECTIVES

H.R. 4864, the “Anti-Terrorism Explosives Act of 2002” does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4864, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 9, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4864, the Anti-Terrorism Explosives Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for Federal costs), who can be reached at 226–2860, and Jean Talarico (for the private-sector impact), who can be reached at 226–2940.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4864—Anti-Terrorism Explosives Act of 2002.

SUMMARY

H.R. 4864 would require all purchasers of explosives to obtain permits from the Bureau of Alcohol, Tobacco, and Firearms (ATF) and would direct that agency to perform background checks on persons who work with explosives. The bill also would require manufacturers and importers of explosive materials or ammonium nitrate to furnish samples and other information to the ATF. Finally, H.R. 4864 would expand the current prohibitions on possession of explosives and would establish new Federal crimes for offenses relating to misuse of explosives.

CBO estimates that implementing H.R. 4864 would cost about \$190 million over the 2003–2007 period for the ATF to administer the bill’s provisions, assuming appropriation of the necessary amounts. We estimate that enacting the bill would increase receipts by about \$2 million over the 2003–2007 period and would

have an insignificant effect on direct spending. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

H.R. 4864 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

H.R. 4864 would impose private-sector mandates, as defined in UMRA, on manufacturers, distributors, importers, and purchasers of explosive materials. CBO estimates that the costs of those mandates would fall well below the annual threshold specified in UMRA (\$115 million in 2002, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4864 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Million of Dollars				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	25	40	42	43	45
Estimated Outlays	23	39	41	43	45
CHANGES IN REVENUES					
Estimated Revenues	1	a	a	a	a

a. Less than \$500,000.

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 4864 would increase costs for the ATF by about \$190 million over the 2003–2007 period. CBO assumes that the necessary amounts will be appropriated by the start of each fiscal year. In addition, the bill also would increase revenues by about \$2 million over the 2003–2007 period and would have a negligible effect on direct spending.

Spending Subject to Appropriation

Under current law, residents of a State may purchase explosives from a business located in that State or in an adjacent State without a Federal permit. H.R. 4864 would require those purchasers of explosives to obtain a permit from the ATF. The agency expects 25,000 to 40,000 persons or firms to need such “limited” permits each year. Under the bill’s provisions, the ATF would have to conduct a field inspection of each applicant. In addition, H.R. 4864 would direct the ATF to conduct background checks on all persons who handle explosives. The ATF expects that roughly 100,000 checks would be required each year under the bill.

Direct Spending and Revenues

The ATF expects to charge a fee of \$25 for each limited permit it issues, plus a \$12.50 renewal fee each year. Because fees that the agency currently charges to issue licenses to manufacturers and dealers of explosives are recorded on the budget as revenues, CBO expects these collections would also be considered revenues. Assuming there are about 30,000 applicants for these permits, CBO estimates that enacting H.R. 4864 would increase revenues by about \$800,000 in fiscal year 2003 and by about \$400,000 in each year thereafter.

Enacting H.R. 4864 also could increase collections of criminal fines for violations of the bill's provisions relating to use of explosives. CBO estimates that any additional collections would not be significant because of the small number of additional cases likely to be affected. Criminal fines are recorded as receipts and deposited in the Crime Victims Fund, then later spent.

The Balanced Budget and Emergency Deficit Control Act specifies procedures for legislation affecting direct spending and receipts. Pay-as-you-go procedures would apply to H.R. 4864 because the bill would affect direct spending and receipts. Except for the estimated receipts of nearly \$1 million in 2003, annual effects on direct spending and revenues would be less than \$500,000 a year, as shown in the following table.

[illegible]

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 4864 contains no intergovernmental mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 4864 would impose private-sector mandates as defined in UMRA on manufacturers, distributors, importers, and purchasers of explosive materials. CBO estimates that the costs of those mandates would fall well below the annual threshold specified in UMRA (\$115 million in 2002, adjusted annually for inflation).

Background Checks and Federal Permits

H.R. 4864 would require applicants for Federal licenses and permits for handling explosives to submit identifying information on specific employees to the ATF. The bill also would require certain persons with management responsibilities related to explosives to submit fingerprints and a photograph.

Under current law, residents of a State may purchase explosives from a business located in that State or in an adjacent State without a Federal permit. The bill would require those purchasers of explosives to obtain a permit from the ATF.

Based on information from the ATF and representatives of the commercial explosives industry, CBO estimates that the cost for those mandates would be less than \$2 million annually beginning in 2003.

Samples of Materials and other Information

H.R. 4864 would require manufacturers and importers of explosive materials or ammonium nitrate to furnish samples of those materials to the ATF. The cost of this mandate would be comprised of the fair market value of the samples and the cost of shipping those samples. The bill would provide reimbursement for those costs and, therefore, the mandated entities would not incur any compliance costs.

In addition, the bill would require manufacturers and importers of explosive materials or ammonium nitrate to furnish any information that the Secretary determines to be relevant to the identification of the explosive material or ammonium nitrate. Based on information from the ATF, the specific information that may be required is not determined, but it is expected not to be large.

Prohibition to Receive and Possess Explosive Materials

The bill would expand the categories of individuals who would be prohibited from receiving and possessing explosive materials to include persons who have been committed to a mental institution, discharged dishonorably from the Armed Forces, certain aliens, and U.S. citizens who have renounced their citizenship. Based on information from ATF and representatives of the commercial explosives industry, the number of people affected would not be great. Thus, CBO estimates that the cost of this mandate would be small.

ESTIMATE PREPARED BY:

Federal Spending: Mark Grabowicz (226–2860)

Impact on State, Local, and Tribal Governments: Angela Seitz
(225–3220)

Impact on the Private Sector: Jean Talarico (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 1 and 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title.

The short title of this bill is the “Anti-Terrorism Explosives Act of 2002.”

Section 2. Permits for Purchasers of Explosives.

Current law makes it a crime to transport, ship, receive, or distribute explosive materials in interstate or foreign commerce without a license or permit issued by the Bureau of Alcohol, Tobacco and Firearms (ATF).² However, under current law a loophole exists which allows purchases of explosives without a Federal license or permit within a State by a resident of that State.³

This section of the bill requires any individual who seeks to purchase explosive materials to obtain a license, permit, or limited permit from ATF and makes it unlawful for any person to distribute explosive materials to a person who is not the holder of a license, permit, or limited permit. The new permit requirement would close the current loophole in the law and significantly enhance the government’s ability to prevent the misuse and unsafe storage of explosives.

This section creates an additional option for a permit called a “limited permit.” Limited permittees will be allowed to purchase explosives four times in a twelve month period. The use of limited permits will provide better regulation and tracking of explosives in the United States. Limited permittees will be required to undergo an application process similar to that required of licensees and permittees, with some exceptions. Currently, licensees and permittees may be inspected at any time by ATF officials to ensure compliance with explosives regulations. This legislation does not allow ATF the right of entry without a warrant on the property of persons possessing limited permits; however, it may be necessary for ATF to verify the accuracy of information provided by individuals applying for a limited permit, including inspection of storage facilities prior to approval of that application. As part of the permit application and renewal process, ATF will conduct background checks on all individuals wishing to acquire or possess explosive materials. Any person or entity seeking to obtain a license or permit from ATF will be required to undergo a background check and allow background

² 18 U.S.C. §§ 842, 843

³ 18 U.S.C. § 842(a)(3)

checks of company employees, thereby reducing the availability of explosives to terrorists, felons and others prohibited by law from possessing explosives.

Applicants would be required to submit photographs and fingerprints along with their applications, to ensure that a thorough background check can be completed. In the case of a corporation, partnership or association, the applicant would be required to submit fingerprints and photographs of responsible persons, meaning those individuals who possess the power to direct the management and policies of the corporation, partnership or association pertaining to explosive materials.

This section will also require applicants to list the names of all employees who will have possession of explosive materials, so that ATF can verify that these individuals are not prohibited from receiving or possessing explosives. Under current law, it is too easy for would-be terrorists and criminals to obtain access to explosive materials by obtaining jobs with explosives licensees or permittees. These expanded requirements would also apply to entities seeking to obtain a license to sell explosives as well as applicants for permits.

This section is not intended to require corporate applicants for explosives licenses or permits to list every single corporate director or officer as a “responsible person” on its application. Those officials within the corporation who have no power to direct the management and policies of the applicant with respect to explosive materials need not be listed on the application. For example, in a large corporation that uses explosives in just one of many business activities, there may be many corporate officials who have no responsibilities or authority in connection with the explosives aspects of the company’s business. These officials would not be listed as “responsible persons” on the application, and would not need to submit fingerprints or photographs to ATF.

The Secretary of Treasury should strive for balanced enforcement. In so doing, the Secretary should avoid imposing unnecessary burdens on applicants for explosives licenses and permits. There is no reason to require background checks for corporate officials who have no responsibilities or authority in connection with the explosives aspects of the company’s business.

It is expected that ATF will work closely with the regulated industry to develop guidance as to which employees are considered to be in “possession” of explosive materials in the course of their employment. Applicants for explosives licenses or permits are not required to list every single employee of the business. Instead, they are only required to list employees who are expected to possess explosive materials as part of their duties.

In developing these standards, ATF should be guided by the case law interpreting the term “possession” under the Gun Control Act of 1968 (GCA)⁴, as amended. It is well established that possession under the GCA may be demonstrated through either actual or constructive possession. Actual possession exists when a person is in immediate possession or control of an object, and includes instances where a person knowingly has direct physical control over the object at a given time. Thus, employees who physically handle explo-

⁴ 18 U.S.C. Ch. 44, §§ 921 et seq.

sive materials would clearly be in possession of those materials. This would include, among others, employees who handle explosive materials (as defined by the law) as part of a production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees who actually use the explosive materials. All of these employees, as well as any other employees who actually possess explosive materials as part of their duties, must be listed on the application for a license or permit.

Where direct physical contact is lacking, a person may nonetheless have constructive possession where he or she knowingly has the power and the intention at a given time to exercise dominion and control over the explosives, either directly or through others. Accordingly, this section would require applicants for licenses or permits to list all employees who will have constructive possession of explosive materials as part of their duties. For example, a supervisor at a construction site who keeps the keys for the building in which the explosives are stored, and directs the use of explosives by other employees, would be in constructive possession of those explosives.

The background checks will be performed by ATF and the employer will be notified if an employee is cleared or a prohibited person; however, the individual who is determined to be prohibited, not the employer, is the only one who will receive information regarding the reason for the prohibition. The individual is then free to appeal or challenge the prohibition. Additionally, individuals who pass a background check will receive a letter from ATF that may serve as verification that they are not a prohibited person for future employees. The Committee expects the background checks will be possessed in a timely manner.

Permittees or licensees who hire new employees who will be authorized to possess or will be "responsible persons" after an application for a permit or license was approved would be expected to submit those names to ATF for a background check. Individuals employed by a licensee or permittee at the time this legislation is enacted will be required to submit to a background check at the time the employer applies for the renewal of a license or permit or issuance of a new license or permit by ATF.

Given the fact that this legislation will require applicants to provide additional information which must be reviewed and verified by ATF, the time period for approval or denial of an application was extended from 45 days to 90 days under this legislation to allow additional time to process applications. However, it is expected that the ATF will process applications in a timely fashion and will not deny approval of applications based solely on its inability to complete the application process in the time established by statute. Pending approval of the renewal of a license or permit, the Committee expects the ATF to allow current licensees and permittees to continue operations.

Section 3. Persons Prohibited From Receiving or Possessing Explosive Materials.

Under current law, persons who have been committed to a mental institution, aliens that are not lawful permanent residents of the United States, persons who have been dishonorably discharged from the military, and Americans who have renounced their citi-

zenship are not prohibited from receiving or possessing explosive materials.⁵

This section expands the list of persons prohibited from possessing explosive materials to include unlawful aliens, persons dishonorably discharged from the Armed Forces, persons committed to a mental institution, and persons who have renounced their citizenship of the United States. These additions will make the categories of persons prohibited from possessing explosives similar to the categories of persons prohibited from obtaining firearms. This section also expands the categories of persons who may seek relief from disability under these provisions to include all categories of prohibited persons.

Section 4. Requirement to Provide Samples of Explosive Materials and Ammonium Nitrate.

This section requires companies who import or manufacture explosive materials to provide ATF with samples on a reimbursable basis to allow for easier tracking and identification after an incident.

Section 5. Destruction of Property of Institutions Receiving Federal Financial Assistance.

This section expands ATF authority to investigate destruction of property by fire or explosion if the institution receives Federal assistance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

* * * * *

§ 841. Definitions

As used in this chapter—

(a) * * *

* * * * *

⁵ 18 U.S.C. § 842

[(j) “Permittee” means any user of explosives for a lawful purpose, who has obtained a user permit under the provisions of this chapter.]

(j) *“Permittee” means any user of explosives for a lawful purpose, who has obtained a user permit or a limited permit under this chapter.*

* * * * *

§ 842. Unlawful acts

(a) It shall be unlawful for any person—

(1) to engage in the business of importing, manufacturing, or dealing in explosive materials without a license issued under this chapter;

(2) knowingly to withhold information or to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the provisions of this chapter; [and]

[(3) other than a licensee or permittee knowingly—

[(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials, except that a person who lawfully purchases explosive materials from a licensee in a State contiguous to the State in which the purchaser resides may ship, transport, or cause to be transported such explosive materials to the State in which he resides and may receive such explosive materials in the State in which he resides, if such transportation, shipment, or receipt is permitted by the law of the State in which he resides; or

[(B) to distribute explosive materials to any person (other than a licensee or permittee) who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

[(b) It shall be unlawful for any licensee knowingly to distribute any explosive materials to any person except—

[(1) a licensee;

[(2) a permittee; or

[(3) a resident of the State where distribution is made and in which the licensee is licensed to do business or a State contiguous thereto if permitted by the law of the State of the purchaser's residence.]

(3) *other than a licensee or permittee, knowingly—*

(A) to transport, ship, cause to be transported, or receive any explosive materials; or

(B) to distribute explosive materials to any person other than a licensee or permittee; or

(4) *who is a holder of a limited permit—*

(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

(B) to receive explosive materials from a licensee or permittee whose premises are located in the State of residence of the holder, except that the holder of a limited permit may

so receive explosive materials on 4 or fewer occasions pursuant to regulations prescribed by the Secretary.

(b) It shall be unlawful for any licensee or permittee knowingly to distribute any explosive materials to any person other than—

- (1) a licensee;*
- (2) a holder of a user permit; or*
- (3) a holder of a limited permit who is a resident of the State where distribution is made and in which the transferor's premises are located.*

* * * * *

(d) It shall be unlawful for any person knowingly to distribute explosive materials to any individual who:

*(1) * * **

* * * * *

(5) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); [or]

(6) has been adjudicated a mental defective[.] or has been committed to a mental institution;

(7) is an alien, other than a lawful permanent resident alien (as defined in section 101(a)(20) of the Immigration and Nationality Act) or an alien described in subsection (q)(2) of this section;

(8) has been discharged from the Armed Forces under dishonorable conditions; or

(9) having been a citizen of the United States, has renounced his citizenship.

* * * * *

(i) It shall be unlawful for any person—

*(1) * * **

* * * * *

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); [or]

* * * * *

(5) who, is an alien, other than a lawful permanent resident alien (as defined in section 101(a)(20) of the Immigration and Nationality Act) or an alien described in subsection (q)(2);

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States, has renounced his citizenship;

* * * * *

(q) PROVISIONS RELATING TO LEGAL ALIENS.—

(1) DEFINITION.—In this subsection, the term “alien” has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

(2) EXCEPTIONS.—An alien is described in this paragraph if the alien—

(A) is—

(i) in lawful nonimmigrant status;

(ii) a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); or

(iii) in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158); and
(B) is—

(i) a law enforcement officer of a foreign country designated in writing by the Attorney General as a country covered by this subparagraph, and is entering the United States on official law enforcement business;

(ii) a person having the authority to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed under section 843(a), and shipping, transporting, possessing or receiving explosive materials relates to the authority; or

(iii) a member of the armed forces of a foreign country that is a member of the North Atlantic Treaty Organization, Australia, New Zealand, Japan, Republic of Korea, or other foreign country designated in writing by the Attorney General, after consultation with the Secretary of Defense, as a country covered by this subparagraph (whether or not admitted in a non-immigrant status), who is present in the United States under military orders for training or other authorized purpose, and the shipping, transporting, possessing, or receiving explosive materials is in furtherance of the military purpose;

(iv) lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation.

§ 843. Licenses and user permits

(a) An application for a user permit or limited permit or a license to import, manufacture, or deal in explosive materials shall be in such form and contain such information as the Secretary shall by regulation prescribe, *including the names of and appropriate identifying information regarding all employees who will be authorized by the employer to possess explosive materials, as well as fingerprints and a photograph of each responsible person with respect to the applicant. In this section, the term “responsible person” means, with respect to an applicant, an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.* Each applicant for a license or permit shall pay a fee to be charged as set by the Secretary, said fee not to exceed \$200 for each license or permit. **[Each license or permit shall be valid for no longer than three years from date of issuance and shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit and upon payment of a renewal fee not to exceed one-half of the original fee.]** *Each license or user permit shall be valid for no longer than 3 years from the date of issuance, and each limited permit shall be valid for no longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions*

and subject to the same restrictions as the original license or permit (except that, in the case of the renewal of a limited permit, the verification requirement of subsection (b)(5) may be satisfied by inspection or such other means as the Secretary deems appropriate) and upon payment of a renewal fee not to exceed 1/2 of the original fee.

(b) Upon the filing of a proper application and payment of the prescribed fee, and subject to the provisions of this chapter and other applicable laws, the Secretary shall issue to such applicant the appropriate license or permit if—

[(1) the applicant (including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom the distribution of explosive materials would be unlawful under section 842(d) of this chapter;]

(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person who is prohibited from receiving, distributing, transporting, or possessing explosive materials under subsection (d) or (i) of section 842;

(2) none of the employees who will be authorized by the applicant to possess explosive materials in the course of their employment with the applicant is a person whose possession of explosives would be unlawful under section 842(i);

[(2)] (3) the applicant has not willfully violated any of the provisions of this chapter or regulations issued hereunder;

[(3)] (4) the applicant has in a State premises from which he conducts or intends to conduct business;

[(4)] (5) *the Secretary has verified by inspection that the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Secretary by regulations shall prescribe; [and]*

[(5)] (6) the applicant has demonstrated and certified in writing that he is familiar with all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business[.]; and

(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 4 different occasions during any 12-month period in which a limited permit issued to the applicant is in effect.

(c) The Secretary shall approve or deny an application within [a period of forty-five days beginning on the date such] 90 days after the application is received by the Secretary.

* * * * *

(f) Licensees and [permittees] holders of user permits shall make available for inspection at all reasonable times their records kept pursuant to this chapter or the regulations issued hereunder, and licensees and permittees shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. The Secretary may enter during business hours the premises (including places of storage) of any licensee or [permittee] holder of a user permit, for

the purpose of inspecting or examining (1) any records or documents required to be kept by such licensee or permittee, under the provisions of this chapter or regulations issued hereunder, and (2) any explosive materials kept or stored by such licensee or permittee at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

(g) Licenses and *user* permits issued under the provisions of subsection (b) of this section shall be kept posted and kept available for inspection on the premises covered by the license and permit.

(h)(1) If the Secretary receives from an employer the name and other identifying information with respect to a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether possession of explosives by the responsible person or the employee, as the case may be, would be unlawful under section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2) of this subsection.

(2)(A) If the Secretary determines that possession of explosives by the responsible person or the employee would not be unlawful under section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a letter of clearance which confirms the determination.

(B) If the Secretary determines that possession of explosives by the responsible person or the employee would be unlawful under section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document which confirms the determination, explains the grounds for the determination, provides information on how the disability may be relieved, and explains how the determination may be appealed.

(i) A person who manufactures or imports explosive materials or ammonium nitrate shall, as required by letter issued by the Secretary, furnish samples of the explosive materials or ammonium nitrate, information on chemical composition of the explosive materials or ammonium nitrate, and any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate. The Secretary shall, by regulation, provide for the reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.

§ 844. Penalties

(a) * * *

* * * * *

(f)(1) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building,

vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, *or any institution or organization receiving Federal financial assistance*, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

* * * * *

§ 845. Exceptions; relief from disabilities

(a) * * *

(b) A person who [had been indicted for or convicted of a crime punishable by imprisonment for a term exceeding one year] *is prohibited from shipping, transporting, receiving, or possessing any explosive* may make application to the Secretary for relief from the disabilities imposed by this chapter with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials, and incurred by reason [of such indictment or conviction] *of the applicable provision of section 842(i)*, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding [the indictment or conviction] *the applicability of such provision*, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief will not be contrary to the public interest. A licensee or permittee who makes application for relief from the disabilities incurred under this chapter by reason [of indictment or conviction] *of such applicability*, shall not be barred [by such indictment or conviction] *by such applicability* from further operations under his license or permit pending final action on an application for relief filed pursuant to this section.

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JUNE 19, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:29 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

* * * * *

The next item on the agenda is the adoption of H.R. 4864, the "Anti-Terrorism Explosives Act of 2002."

The Chair recognizes the gentleman from Texas, Mr. Smith, the Subcommittee Chairman, for purposes of a motion.

Mr. SMITH. Mr. Chairman, the Subcommittee on Crime, Terrorism, and Homeland Security reports favorably the bill H.R. 4864 and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be-
cause considered as read and open for amendment at any point.
[The bill, H.R. 4864, follows:]

107TH CONGRESS
2D SESSION

H. R. 4864

To combat terrorism and defend the Nation against terrorist acts, and for
other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2002

Mr. SENSENBRENNER (for himself, Mr. CONYERS, and Mr. SMITH of Texas)
introduced the following bill; which was referred to the Committee on the
Judiciary

A BILL

To combat terrorism and defend the Nation against terrorist
acts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Terrorism Explo-
5 sives Act of 2002”.

6 **SEC. 2. PERMITS FOR PURCHASERS OF EXPLOSIVES.**

7 (a) DEFINITIONS.—Section 841(j) of title 18, United
8 States Code, is amended to read as follows:

1 “(j) ‘Permittee’ means any user of explosives for a
2 lawful purpose, who has obtained a user permit or a lim-
3 ited permit under this chapter.”.

4 (b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Sec-
5 tion 842 of such title is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (2), by striking “and”;

8 and

9 (B) by striking paragraph (3) and insert-
10 ing the following:

11 “(3) other than a licensee or permittee,
12 knowingly—

13 “(A) to transport, ship, cause to be trans-
14 ported, or receive any explosive materials; or

15 “(B) to distribute explosive materials to
16 any person other than a licensee or permittee;
17 or

18 “(4) who is a holder of a limited permit—

19 “(A) to transport, ship, cause to be trans-
20 ported, or receive in interstate or foreign com-
21 merce any explosive materials; or

22 “(B) to receive explosive materials from a
23 licensee or permittee whose premises are located
24 in the State of residence of the holder, except
25 that the holder of a limited permit may so re-

1 ceive explosive materials on 4 or fewer occasions
 2 pursuant to regulations prescribed by the Sec-
 3 retary.”; and

4 (2) by striking subsection (b) and inserting the
 5 following:

6 “(b) It shall be unlawful for any licensee or permittee
 7 knowingly to distribute any explosive materials to any per-
 8 son other than—

9 “(1) a licensee;

10 “(2) a holder of a user permit; or

11 “(3) a holder of a limited permit who is a resi-
 12 dent of the State where distribution is made and in
 13 which the transferor’s premises are located.”.

14 (c) LICENSES AND USER PERMITS.—Section 843(a)
 15 of such title is amended—

16 (1) in the 1st sentence—

17 (A) by inserting “or limited permit” after
 18 “user permit”; and

19 (B) by inserting “, including the names of
 20 and appropriate identifying information regard-
 21 ing all employees who will be authorized by the
 22 employer to possess explosive materials, as well
 23 as fingerprints and a photograph of each re-
 24 sponsible person with respect to the applicant.

25 In this section, the term ‘responsible person’

1 means, with respect to an applicant, an indi-
2 vidual who has the power to direct the manage-
3 ment and policies of the applicant pertaining to
4 explosive materials” before the period; and

5 (2) by striking the 3rd sentence and inserting
6 “Each license or user permit shall be valid for no
7 longer than 3 years from the date of issuance, and
8 each limited permit shall be valid for no longer than
9 1 year from the date of issuance. Each license or
10 permit shall be renewable upon the same conditions
11 and subject to the same restrictions as the original
12 license or permit (except that, in the case of the re-
13 newal of a limited permit, the verification require-
14 ment of subsection (b)(4) may be satisfied by inspec-
15 tion or such other means as the Secretary deems ap-
16 propriate) and upon payment of a renewal fee not to
17 exceed $\frac{1}{2}$ of the original fee.”.

18 (d) CRITERIA FOR APPROVING LICENSES AND PER-
19 MITS.—Section 843(b) of such title is amended—

20 (1) by striking paragraph (1) and inserting the
21 following:

22 “(1) the applicant (or, if the applicant is a cor-
23 poration, partnership, or association, each respon-
24 sible person with respect to the applicant) is not a
25 person who is prohibited from receiving, distributing,

1 transporting, or possessing explosive materials under
2 subsection (d) or (i) of section 842;”;

3 (2) by redesignating paragraphs (2) through
4 (5) as paragraphs (3) through (6), respectively, and
5 inserting after paragraph (1) the following:

6 “(2) none of the employees who will be author-
7 ized by the applicant to possess explosive materials
8 in the course of their employment with the applicant
9 is a person whose possession of explosives would be
10 unlawful under section 842(i);”;

11 (3) in paragraph (5) (as so redesignated)—

12 (A) by inserting “the Secretary has
13 verified by inspection that” before “the appli-
14 cant”; and

15 (B) by striking “and” at the end;

16 (4) by striking the period at the end of para-
17 graph (6) (as so redesignated) and inserting “;
18 and”; and

19 (5) by adding at the end the following:

20 “(7) in the case of a limited permit, the appli-
21 cant has certified in writing that the applicant will
22 not receive explosive materials on more than 4 dif-
23 ferent occasions during any 12-month period in
24 which a limited permit issued to the applicant is in
25 effect.”.

1 (e) DEADLINE FOR APPROVAL OR DENIAL OF APPLI-
2 CATION.—Section 843(c) of such title is amended by strik-
3 ing “a period of forty-five days beginning on the date
4 such” and inserting “90 days after the”.

5 (f) INSPECTION AUTHORITY.—Section 843(f) of such
6 title is amended—

7 (1) in the 1st sentence—

8 (A) by striking “permittees” and inserting
9 “holders of user permits”; and

10 (B) by inserting “licensees and permittees”
11 before “shall submit”; and

12 (2) in the 2nd sentence, by striking “permittee”
13 the first place it appears and inserting “holder of a
14 user permit”.

15 (g) POSTING OF PERMITS.—Section 843(g) of such
16 title is amended by inserting “user” before “permits”.

17 (h) BACKGROUND CHECKS; CLEARANCES.—Section
18 843 of such title is amended by adding at the end the
19 following:

20 “(h)(1) If the Secretary receives from an employer
21 the name and other identifying information with respect
22 to a responsible person or an employee who will be author-
23 ized by the employer to possess explosive materials in the
24 course of employment with the employer, the Secretary
25 shall determine whether possession of explosives by the re-

1 sponsible person or the employee, as the case may be,
2 would be unlawful under section 842(i). In making the de-
3 termination, the Secretary may take into account a letter
4 or document issued under paragraph (2) of this sub-
5 section.

6 “(2)(A) If the Secretary determines that possession
7 of explosives by the responsible person or the employee
8 would not be unlawful under section 842(i), the Secretary
9 shall notify the employer in writing or electronically of the
10 determination and issue to the responsible person or the
11 employee, as the case may be, a letter of clearance which
12 confirms the determination.

13 “(B) If the Secretary determines that possession of
14 explosives by the responsible person or the employee would
15 be unlawful under section 842(i), the Secretary shall no-
16 tify the employer in writing or electronically of the deter-
17 mination and issue to the responsible person or the em-
18 ployee, as the case may be, a document which confirms
19 the determination, explains the grounds for the determina-
20 tion, provides information on how the disability may be
21 relieved, and explains how the determination may be ap-
22 pealed.”.

23 (i) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect 180 days after the date of
25 enactment of this Act.

1 **SEC. 3. PERSONS PROHIBITED FROM RECEIVING OR POS-**
2 **SESSING EXPLOSIVE MATERIALS.**

3 (a) DISTRIBUTION OF EXPLOSIVE MATERIALS.—Sec-
4 tion 842(d) of title 18, United States Code, is amended—

5 (1) by striking “or” at the end of paragraph
6 (5);

7 (2) by striking the period at the end of para-
8 graph (6) and inserting “or has been committed to
9 a mental institution;”; and

10 (3) by adding at the end the following:

11 “(7) is an alien, other than a lawful permanent
12 resident alien (as defined in section 101(a)(20) of
13 the Immigration and Nationality Act) or an alien de-
14 scribed in subsection (q)(2) of this section;

15 “(8) has been discharged from the Armed
16 Forces under dishonorable conditions; or

17 “(9) having been a citizen of the United States,
18 has renounced his citizenship.”.

19 (b) POSSESSION OF EXPLOSIVES.—Section 842(i) of
20 such title is amended—

21 (1) by striking “or” at the end of paragraph
22 (3); and

23 (2) by inserting after paragraph (4) the fol-
24 lowing:

25 “(5) who, is an alien, other than a lawful per-
26 manent resident alien (as defined in section

1 101(a)(20) of the Immigration and Nationality Act)
2 or an alien described in subsection (q)(2);

3 “(6) who has been discharged from the Armed
4 Forces under dishonorable conditions; or

5 “(7) who, having been a citizen of the United
6 States, has renounced his citizenship;”.

7 (c) PROVISIONS RELATING TO LEGAL ALIENS.—Sec-
8 tion 842 of such title is amended by adding at the end
9 the following:

10 “(q) PROVISIONS RELATING TO LEGAL ALIENS.—

11 “(1) DEFINITION.—In this subsection, the term
12 ‘alien’ has the same meaning as in section 101(a)(3)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1101(a)(3)).

15 “(2) EXCEPTIONS.—An alien is described in
16 this paragraph if the alien—

17 “(A) is—

18 “(i) in lawful nonimmigrant status;

19 “(ii) a refugee admitted under section
20 207 of the Immigration and Nationality
21 Act (8 U.S.C. 1157); or

22 “(iii) in asylum status under section
23 208 of the Immigration and Nationality
24 Act (8 U.S.C. 1158); and

25 “(B) is—

1 “(i) a law enforcement officer of a for-
2 eign country designated in writing by the
3 Attorney General as a country covered by
4 this subparagraph, and is entering the
5 United States on official law enforcement
6 business;

7 “(ii) a person having the authority to
8 direct or cause the direction of the man-
9 agement and policies of a corporation,
10 partnership, or association licensed under
11 section 843(a), and shipping, transporting,
12 possessing or receiving explosive materials
13 relates to the authority; or

14 “(iii) a member of the armed forces of
15 a foreign country that is a member of the
16 North Atlantic Treaty Organization, Aus-
17 tralia, New Zealand, Japan, Republic of
18 Korea, or other foreign country designated
19 in writing by the Attorney General, after
20 consultation with the Secretary of Defense,
21 as a country covered by this subparagraph
22 (whether or not admitted in a non-immi-
23 grant status), who is present in the United
24 States under military orders for training or
25 other authorized purpose, and the ship-

1 ping, transporting, possessing, or receiving
2 explosive materials is in furtherance of the
3 military purpose;

4 “(iv) an employee of an intelligence
5 agency of a foreign country who is lawfully
6 present in the United States in cooperation
7 with the Director of Central Intelligence.”.

8 (d) EXPANSION OF AUTHORITY TO PROVIDE RELIEF
9 FROM DISABILITIES.—Section 845(b) of such title is
10 amended—

11 (1) by striking “had been indicted for or con-
12 victed of a crime punishable by imprisonment for a
13 term exceeding one year” and inserting “is prohib-
14 ited from shipping, transporting, receiving, or pos-
15 sessing any explosive”;

16 (2) by striking “of such indictment or convic-
17 tion” and inserting “of the applicable provision of
18 section 842(i)”;

19 (3) by striking “the indictment or conviction”
20 and inserting “the applicability of such provision”;

21 (4) by striking “of indictment or conviction”
22 and inserting “of such applicability”; and

23 (5) by striking “by such indictment or convic-
24 tion” and inserting “by such applicability”.

1 **SEC. 4. REQUIREMENT TO PROVIDE SAMPLES OF EXPLO-**
2 **SIVE MATERIALS AND AMMONIUM NITRATE.**

3 Section 843 of title 18, United States Code, is further
4 amended by adding at the end the following:

5 “(i) A person who manufactures or imports explosive
6 materials or ammonium nitrate shall, as required by letter
7 issued by the Secretary, furnish samples of the explosive
8 materials or ammonium nitrate, information on chemical
9 composition of the explosive materials or ammonium ni-
10 trate, and any other information that the Secretary deter-
11 mines is relevant to the identification of the explosive ma-
12 terials or to identification of the ammonium nitrate. The
13 Secretary shall, by regulation, provide for the reimburse-
14 ment of the fair market value of samples furnished pursu-
15 ant to this subsection, as well as the reasonable costs of
16 shipment.”.

17 **SEC. 5. DESTRUCTION OF PROPERTY OF INSTITUTIONS RE-**
18 **CEIVING FEDERAL FINANCIAL ASSISTANCE.**

19 Section 844(f)(1) of title 18, United States Code, is
20 amended by inserting “or any institution or organization
21 receiving Federal financial assistance,” before “shall”.

○

Chairman SENSENBRENNER. The Chair would like to get us done by 12:30, if that's possible. And without objection, opening statements will be placed in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS

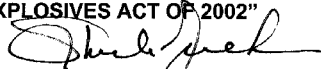
<p>SHEILA JACKSON LEE 18TH DISTRICT, TEXAS</p> <hr/> <p>COMMITTEES: JUDICIARY</p> <p>SUBCOMMITTEES: CRIME</p> <p>RANKING MEMBER IMMIGRATION AND CLAIMS</p> <hr/> <p>SCIENCE</p> <p>SUBCOMMITTEES: SPACE AND AERONAUTICS</p> <p>ENERGY</p> <hr/> <p>CHAIR CONGRESSIONAL CHILDREN'S CAUCUS</p> <hr/> <p>PERSONAL WAP DEMOCRATIC CAUCUS</p> <hr/> <p>2ND VICE CHAIR CONGRESSIONAL BLACK CAUCUS</p>	<p>Congress of the United States House of Representatives Washington, DC 20515</p>	<p>WASHINGTON OFFICE: 403 CANNON HOUSE OFFICE BUILDING WASHINGTON, DC 20515 (202) 225-3816</p> <p>DISTRICT OFFICE: 1919 SMITH STREET, SUITE 1100 THE GEORGE "MOKEY" LELAND FEDERAL BUILDING HOUSTON, TX 77002 (713) 965-9052</p> <p>AGNES HOME OFFICE: 6719 WEST MONTGOMERY, SUITE 204 HOUSTON, TX 77015 (713) 691-4882</p> <p>HEIGHTS OFFICE: 420 WEST 18TH STREET HOUSTON, TX 77008 (713) 861-4070</p>
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OPENING STATEMENT

CONGRESSWOMAN SHEILA JACKSON LEE

ON

H.R. 4864 "ANTITERRORISM EXPLOSIVES ACT OF 2002"



Thank you Mr. Chairman and Mr. Scott for the opportunity to review this important legislation to combat the proliferation of illegally obtained explosives. With the recent arrest of Abudullah al Muhajir (Moo-Ha-Jer), also known as Jose Padilla it is timely that we are having a hearing on this particular bill. The prospect of a terrorist obtaining explosives and using them in conjunction with radioactive material is a real threat. This legislation may have an impact on this present threat.

I believe it is imperative that ATF coordinate the permit holder information with all law entities. It does no good for the ATF to have the information on paper forms when the FBI is pursuing leads and needs the information in milliseconds. That is why I strongly encourage ATF to electronically store the information in accordance with H.R. 4598, Homeland Security Information Sharing Act. This will enhance the security net of the United States and prevent terrorist from slipping through the cracks.

Chairman SENSENBRENNER. Are there amendments?

Ms. JACKSON LEE. I have an amendment, Mr. Chairman. I'll be very brief.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 4864, offered by Ms. Jackson Lee—

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

Amendment to H.R. 4864
Offered By Ms. Jackson Lee of Texas

Page 7, after line 25, insert the following:

(j) Electronic Records -

Not later than one year after the effective date of this act the Secretary of the Treasury shall maintain an electronic record of each license, user permit, or limited permit issued or renewed under Section 843 of title 18, United States Code on or after one year after the effective date of this act .

Chairman SENSENBRENNER. The gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the distinguished Chairman, and I thank the Committee, and I thank the Ranking Member of this Committee, and the Chairman as well.

We know, with the new assignment that has been given to this Subcommittee, which provides for oversight over homeland security, these are important issues dealing with antiterrorism. Knowing that this is an important legislative initiative dealing with the issue of explosives, which we have confronted in the most tragic way on September 11th, I simply add the keeping of records; that

we have worked with the Chairman and the Ranking Member, I believe, on this legislation.

And all this amendment does is, not later than 1 year after the effective date of this act, the Secretary of the Treasury shall maintain an electronic record of each license, user permit, or limited permit issued or renewed under section 843 on or after 1 year after the effective date of this act.

This, again, goes to data collection. We believe this is an important aspect to help with ATF, coordinating the permit-holder information——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. JACKSON LEE. I'd be happy to yield.

Chairman SENSENBRENNER. I believe this is a constructive addition to the legislation and favor the amendment.

Ms. JACKSON LEE. I yield back. I thank the distinguished gentleman.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. Are there further amendments?

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. And I know we're trying to move quickly.

I just wanted to point out that the Administration witness who testified indicated that they do not have the administrative capability of performing the tasks under this bill, but they will ask for funding.

So I would want the Members of the Committee to be sensitive to the idea that when they ask for funding—when we pass the bill, funding will be necessary for them to be to comply with the bill.

Chairman SENSENBRENNER. Does the gentleman yield?

Mr. SCOTT. I yield.

Chairman SENSENBRENNER. I agree with the gentleman from Virginia on that point. But as you know, the appropriators usually don't care what authorizers think. But we will speak up.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is—the Chair notes the—are there further amendments?

The Chair notes the presence of a reporting quorum.

Those in favor of reporting the bill favorably will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendment adopted here today. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to

make technical and conforming changes. And all Members will be given 2 days, as provided by House rules, in which to submit additional, dissenting, supplemental, or minority views.

The Chair would like to thank everybody for their cooperation. We made this a rolling markup. We have now rolled our way all the way down the hill and have accomplished quite a bit.

The Judiciary Committee remains the most productive in Congress, because everybody works together.

And the Committee is adjourned.

[Whereupon, at 12:15 p.m., the Committee was adjourned.]

